

Serial No: 10/824,202

7

Examiner: Luke E. Karpinski
Art Unit: 4173REMARKS

In response to the Patent Office Letter of January 8, 2008, the Applicant respectfully requests re-examination and reconsideration. To further the prosecution of this application further amendments have been made in the two independent claims, namely in claims 1 and 9. Also, several claims have been canceled from the application, particularly the subject matter of claims 2 and 4 as this subject matter has now in essence been incorporated into respective claims 1 and 9.

The Applicant has made a change in the specification per the foregoing. This now indicates that examples 1a and 1d do not form part of the present invention.

In the Patent Office Letter the Examiner has set forth a rejection under 35 U.S.C. §102 based both on the Dawson et al. U.S. Patent 4,772,427, as well as the PCT Publication No. PCT/GB96/010744 to Hall et al. Furthermore, a rejection under 35 U.S.C. has been made by the Examiner based upon the combination of Hall et al. and Dawson et al.

Before discussing the references cited by the Examiner, the Applicant wishes to now point out the background relating to the present invention. The problem addressed by the present invention is the provision of a post-foaming cleansing composition which is sufficiently mobile to allow for easy processing and packaging. Therefore, the formation of a gel is delayed for a sufficient period to allow for pumping and filling of packaging (see page 3, lines 5-10 and page 3, line 17 to page 4, line 10 of the description). Refer also to the present application on pages 3 and 4 where further advantages of the present invention are set forth.

Contrary to the present invention, Hall et al., is not concerned with providing a delayed gelling composition. As a matter of fact with reference to the Hall et al. reference they describe an important feature of that invention as the fact that the viscosity of the base material is already in the form of a gel prior to inclusion of the propellant. In this regard refer to page 3 of Hall et al. Accordingly, this is contrary to the aim of the present invention. Therefore, if a person skilled in the art did consider Hall et al., there is no teaching in Hall et al. that would prompt one skilled in the art to try to use the specific alkoxylated alcohols, in combination with an anionic surfactant and a post-foaming agent at a ratio of anionic surfactant to non-ionic gelling agent of 4:1 or

Serial No: 10/824,202

8

Examiner: Luke E. Karpinski
Art Unit: 4173

greater in order to obtain a delayed gelling composition. Furthermore, there is no teaching in Hall et al. that would lead a person skilled in the art to believe that a composition such as set forth in amended claim 1 would provide an advantageous delayed gelling property as Hall et al. is totally silent on this point.

The present Applicant is quite familiar with the Hall et al. reference as it is commonly owned with the present application. As acknowledged by the Examiner on the top of page 7 of the Patent Office Action, Hall et al. does not teach 1) the non-ionic gelling agent consisting of Laureth-4 and 2) the non-ionic gelling agent comprising of 0.01% to 8% of the total composition. Hall does not disclose non-ionic gelling agents which are alkoxyated alcohols and does not disclose any of the specific alkoxyated alcohols to which claim 1 has now been amended. Accordingly, claim 1 as now amended clearly patentably distinguishes over the Hall et al. reference.

Regarding the Dawson '427 reference, this reference teaches that the product gels upon the addition of the post-foaming agent and forms a viscous gel prior to filling a suitable container. In this regard, refer to page 2, lines 6-10 of the description. Therefore, in accordance with the teachings in Dawson, the gel does not remain substantially unchanged for at least four minutes as required by claim 1.

Additionally, Dawson uses the ethoxylated fatty alcohols bridging columns 4 and 5 thereof. It does not disclose or suggest any of the alkoxyated alcohols, laureth-2, laureth-4, C12/13 pareth-3, cetareth-4, or oleth-3 alone or in combination. A skilled person would therefore not consider using these alkoxyated alcohols from reading Dawson. Accordingly, the claims presented in this application are therefore believed to clearly be patentable over the Dawson reference.

As indicated previously, the practice of the present invention is to delay the formation of the gel for a sufficient period to allow for pumping and filling of packaging. This is not even an issue that has been addressed by Hall et al, nor by Dawson et al. In this regard, with regard to Hall et al. it is noted that the Examiner has indicated that it is incumbent upon the Applicant to show that the compositions of Hall et al. do not retain this delay property. Again, reference is

Serial No: 10/824,202

9

Examiner: Luke E. Karpinski
Art Unit: 4173

made to page 3 of Hall et al. where it is indicated that an important feature of Hall et al. is the provision of a base material that is "already in the form of a gel prior to the inclusion of the propellant." Thus, Hall et al. clearly is not illustrative of this delay feature and neither was the delay feature even addressed in Hall et al.

This delay feature comes about by the combination of the elements as now recited in amended claim 1 wherein the non-ionic gelling agent is selected from alkoxyated alcohols laureth-2, laureth-4, C12/13 pareth-3, cetareth-4, or oeth-3 alone or in combination, and wherein the at least one non-ionic gelling agent constitutes from about 0.01 to 8.0% by weight of the total composition. It is the Applicant's position that, particularly with regard to the rejection under 35 U.S.C. §103, the Examiner is using hindsight reasoning in formulating the rejection as there is no clear teaching or suggestion from the references to make the combination as now set forth in amended claim 1.

It is to be noted that the gel rigidity of the composition of the present invention always remains substantially unchanged for at least four minutes after the addition of the post-foaming agent. This characteristic distinguishes from the Dawson passage bridging columns 8 and 9 which states that the gel may be formed immediately or may take 24 hours depending upon the formulation, although, no teaching appears in Dawson as to how the formulation may be varied to achieve a desired gelling time. In the Dawson reference, the gelling time is essentially irrelevant in that gelling is achieved, under pressure, and prior to filling the final product container, again, under pressure. In this regard refer to Dawson at column 8, lines 41-52. Refer particularly to column 8 commencing at line 50 wherein it is stated in Dawson that the "gel is maintained under pressure during the packaging into a container . . ." On the other hand, in the Applicant's composition the product gels after the container is filled and thus with no need for pressure. In this regard, the Examiner's attention is drawn to a limitation found in method claim 9 which includes, in addition to the four-minute limitation, also the fact that the mixture is combined with the post-foaming agent with the filling of the mixture into the package prior to a gel structure being formed. This clearly distinguishes the method of the present invention over that shown in Dawson whether it be taken alone or in combination with other prior art cited.

Serial No: 10/824,202

10

Examiner: Luke E. Karpinski
Art Unit: 4173

Moreover, the formulation of the present invention differs from that in the prior art in that it contains an amphoteric surfactant. In this regard, refer to the further revision found in claim 1 that defines at least one anionic surfactant together with at least one amphoteric surfactant.

Moreover, it is noted that claim 5 has now been amended to also introduce, in combination with claim 1, the limitation that the composition is filled into a packaging prior to the gel structure being formed. Support for this further limitation is found in the present specification particularly at the bottom of page 9.

Accordingly, amendments have been made in claims 1 and 9 to introduce subject matter substantially the same as that found in the prior but now canceled claims 2 and 4. With these amendments it is believed that all claims in this application should now be in condition for allowance.

Regarding the rejection of double patenting, the Applicant requests that this matter be held in abeyance pending an indication of allowable subject matter.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

Serial No: 10/824,202

11

Examiner: Luke E. Karpinski
Art Unit: 4173

The U.S. Patent and Trademark Office is authorized to charge any fees incurred as a result of the filing hereof to our Deposit Account No. 19-0120.

Respectfully submitted,
Najem YAQUB et al., Applicants

Date: 7/8/08

David M. Driscoll
Reg. No. 25,075
SALTER & MICHAELSON
321 South Main Street
Providence RI 02903
Tele: 401/421-3141
Fax : 401/861-1953
Customer No. 000987